

## REMARKS

### INTRODUCTION:

As set forth in the preceding section, claim 45 has been amended. Support for the amendment may be found at least at paragraph [0023] of the present application and therefore no new matter has been added.

Claims 1, 2, 3, 5-12, 44 and 45 are pending and under consideration. Claims 1, 44 and 45 are independent claims. Applicant requests reconsideration and allowance of the present application in view of the current amendments and the following remarks.

### REJECTIONS UNDER 35 USC §103:

Claims 1-2, 5-12, 44 and 45 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,959,288 to Medina et al. ("Medina") in view of U.S. Patent No. 6,823,436 to Berkun et al. ("Berkun"). Claim 3 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Medina in view of Berkun and further in view of U.S. Patent No. 7,209,571 to Davis et al. ("Davis"). The rejections are respectfully traversed.

Previously amended independent claim 1 recites at least the following:

generating a plurality of metadata fragment data by partitioning  
metadata to be transmitted based upon a predetermined semantic  
unit

The cited portions of Medina, Berkun and Davis, alone or in combination, fail to suggest or disclose all of the above-claimed features.

The Office Action notes at page 3, item 10, that "Medina does not explicitly disclose in detail dividing the metadata based upon a predetermined semantic unit." However, the Office Action proposes, at page 4, to modify Medina based on Berkun and asserts that Berkun describes all of the above-recited features at paragraphs [0009] and [0042]. Applicant respectfully disagrees with the Office Action conclusion for at least the following reasons.

The cited portion of Berkun states that "metadata is indexed and parsed into metadata fields." With regard to the parsing of metadata, Berkun, at paragraph [0044], further clarifies:

The metadata is extracted by extracting agent 68, and parsed and indexed into the following metadata fields: the referring URL, the media URL, the title, and the performer of the song.

The Office Action fails to establish that Berkun's "metadata fields" describe "a predetermined semantic unit," as claimed. To the contrary, Applicant respectfully submits that such fields merely correspond to various fields included in a database and that the cited fields need not be based on a semantic unit. For example, a URL may be composed of a random string of characters and need not be semantic in nature. Accordingly, the Office Action fails to establish that the cited portions of Berkun describe all of the above-recited features.

In addition, the cited portions of Medina and Davis fail to compensate for the deficiencies of Berkun.

Previously amended independent claim 1 further recites at least the following:

transmitting a container including the selected metadata fragment data and the metadata-related metadata container-level authentication message digest information with data format information indicating a type of the selected metadata fragment data.

The cited portions of Medina, Berkun and Davis, alone or in combination, fail to suggest or disclose all of the above-claimed features.

The Office Action asserts at page 3, item 10, that "Medina describes the above-recited features at col. 16, lines 55-64, col. 12, lines 17-20, col. 12, lines 39-42, col. 16, lines 55-64 and col. 27, lines 18-38. Applicant respectfully disagrees that Medina describes all of the above-claimed features for at least the following reasons.

Medina, at col. 16, lines 55-64, states:

In the Secure Digital Content Electronic Distribution System 100, since SC(s) contain several data parts, a digest is calculated for each part and a summary digest is calculated for the concatenated part digests. The summary digest is encrypted using the private key of the issuer of the SC(s). The encrypted summary digest is the issuer's digital signature for the SC(s). The part digests and the digital signature are included in the body of the SC(s). The recipients of SC(s) can verify the integrity of the SC(s) and its parts by means of the received digital signature and part digests.

Thus, the cited portion of Medina describes a secure container (SC) containing several data parts wherein a digest is calculated for each data part. However, the Office Action fails to establish that the secure container described above includes "data format information indicating a type of the selected metadata fragment data." For example, the cited text states that "a digest is calculated for each part" but fails to mention that format information of the data is included in

the digest and consequently cannot suggest "format information indicating a type of the selected metadata fragment data," as claimed.

Moreover, the remaining portions of Medina cited in the Office Action also support Applicant's argument that the secure container of Medina *fails to* include "data format information," as claimed. For example, col. 12, lines 17-20 of Medina states:

A Metadata Assimilation and Entry Tool 161 is used to extract metadata from the Content Provider(s)' Database 160 or data provided by the Content Provider(s) in a prescribed format (for a music example the Content 113 information such as CD title, artist name, song title, CD artwork, and more) and to package it for electronic distribution.

Thus, the above-cited portion of Medina merely describes extracting metadata in a *prescribed format* but is completely silent with regard to including "data format information" in the Secure Containers. As further evidence of this assertion, Applicant refers to col. 12, lines 39-42 of Medina (also cited in the Office Action), which states:

The encrypted Content 113, digital content-related data or metadata, and encrypted keys are packed in SCs (described below) by the SC Packer Tool and stored in a content hosting site and/or promotional web site for electronic distribution.

The above-cited portion of Medina merely describes packing metadata of a prescribed format into a Secure Container (SC) and is also completely silent with regard to including "data format information" in the Secure Containers.

Still further, col. 27, lines 18-38 Medina describes the contents of a Secure Container but also fails to indicate that the Secure Container includes "data format information," as recited above. Referring to columns 31 and 32 of Medina, a table illustrates all of the component parts of a Metadata Secure Container as described in Medina. However, none of the component parts set forth "data format information indicating a type of the selected metadata fragment data" as recited in amended claim 1.

Applicant therefore asserts that the Office Action fails to demonstrate that the cited portions of Medina describe all of the above-recited features. If the rejection is to be maintained, Applicant respectfully requests the Office provide a particular explanation demonstrating how all of the above-recited features are described.

Further, the cited portions of Berkun and Davis fail to compensate for the deficiencies of Medina.

Accordingly, Applicant respectfully submits that amended independent claim 1 patentably distinguishes over Medina, Berkun and Davis, and should be allowable for at least the above-mentioned reasons. Regarding the rejection of claims 2-3 and 5-12, these claims depend directly or indirectly on independent claim 1 and are therefore believed to be allowable for at least the reasons noted above.

Amended independent claim 45 recites at least the following:

transmitting a metadata container-level authentication container including the selected metadata fragment data and the metadata container-level authentication message digest information with data format information indicating a type of the selected metadata fragment data, wherein the data format information is used to determine whether the generated metadata digest information is valid.

The cited portions of Medina, Berkun and Davis, alone or in combination, fail to suggest or disclose all of the above-claimed features.

The Office Action asserts at page 7, item 21, that “Medina describes at least some of the above-recited features at col. 16, lines 55-64. However, because Medina fails to describe “data format information,” as asserted above with respect to claim 1, Applicant respectfully submits that Medina cannot describe all of the above-claimed features of claim 44 as amended.

Further, the cited portions of Berkun and Davis fail to compensate for the deficiencies of Medina.

Accordingly, Applicant respectfully submits that amended independent claim 44 patentably distinguishes over Medina, Berkun and Davis, and should be allowable for at least the above-mentioned reasons.

Amended independent claim 45 further recites at least the following:

generating a plurality of metadata fragment data by partitioning metadata to be transmitted based upon a predetermined semantic unit having a predetermined meaning.

The cited portions of Medina, Berkun and Davis, alone or in combination, fail to suggest or disclose all of the above-claimed features.

The Office Action notes at page 7, item 21, that “Medina does not explicitly disclose in detail generating a plurality of metadata fragment data by partitioning metadata to be transmitted.” However, the Office Action seeks, at page 7, to modify Medina based on Berkun

and asserts that Berkun describes “generating a plurality of metadata fragment data by partitioning metadata to be transmitted” at paragraphs [0009] and [0042].

Even assuming for the sake of argument that the Office Action assertion is accurate, Applicant submits that the Office Action fails to establish that Berkun describes all of the above-recited features. For example, the Office Action is completely silent with respect to the latter portion of the above-recited claim language.

Moreover, the portion of Berkun cited in the Office Action states that “metadata is indexed and parsed into metadata fields.” With regard to the parsing of metadata, Berkun, at paragraph [0044], further clarifies:

The metadata is extracted by extracting agent 68, and parsed and indexed into the following metadata fields: the referring URL, the media URL, the title, and the performer of the song.

The Office Action fails to establish that Berkun’s “metadata fields” describe “a predetermined semantic unit having a predetermined meaning,” as claimed. To the contrary, Applicant respectfully submits that the fields described in Berkun merely correspond to various fields included in a database and that the cited fields need not be based on a semantic unit. For example, a URL may be composed of a random string of characters and need not be semantic in nature or have a predetermined meaning. The Office Action therefore fails to establish that Berkun describes all of the above-recited features.

Further, the cited portions of Medina and Davis fail to compensate for the deficiencies of Berkun.

Accordingly, Applicant respectfully submits that independent claim 45 patentably distinguishes over Medina, Berkun and Davis, and should be allowable for at least the above-mentioned reasons. Since similar features are recited by independent claim 44, with potentially differing scope and breadth, the rejection of claim 44 should be also be withdrawn.

Previously amended dependent claim 3 recites at least the following:

“[t]he method of claim 1, wherein the data format information indicates whether the selected metadata fragment data has a binary XML format or a text XML format, and each container includes metadata fragment data having only one of a binary XML format and a text XML format.”

Applicant respectfully submit that Medina, Berkun and Davis, alone or in combination, fail to suggest or disclose all of the above-claimed features of claim 3 as amended.

The Office Action notes at page 8, item 22, that Medina in view of Berkun does not explicitly disclose the above-recited features. However, the Office Action further proposes to modify Medina and Berkun based on Davis and asserts that Berkun describes “wherein the data format information indicates whether the selected metadata fragment data has a binary XML format or a text XML format, and each container includes metadata fragment data having only one of a binary XML format and a text XML format” at col. 15, lines 52-54.

Applicant respectfully disagrees with the Office Action conclusion and requests reconsideration for at least the following reasons.

The portion of Davis cited in the Office Action states:

The metadata may be specified using the standard Extensible Markup Language, XML, or some other standard or custom format.

The above-cited portion of Davis merely states that metadata may be specified using standard XML and therefore clearly fails to describe all of the above-recited features. For example, the Office Action fails to indicate where Davis describes “data format information,” “metadata fragment data” “binary XML format” or a “container,” as claimed. Moreover, the Office Action fails to establish where Davis states that “each container includes metadata fragment data having only one of a binary XML format and a text XML format.”

Accordingly, Applicant respectfully submits that dependent claim 3 patentably distinguishes over Medina, Berkun and Davis, and should be allowable for at least the above-mentioned reasons.

#### Insufficient Reason to Combine Articulated

Applicant respectfully submits that the rejection fails to establish a prima facie case of obviousness. To establish a prima facie case of obviousness: 1) there must be some suggestion or reason to combine the references, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art; 2) there must be a reasonable expectation of success; and 3) the references must either teach or suggest all the claim limitations or the Office must provide a rationale as to why the differences between the claimed invention and the prior art are obvious. MPEP 2141.

Here, no persuasive citation to the prior art has been offered as providing a suggestion or reason to modify Medina and Berkun, nor does the Office Action provide evidence demonstrating an implicit reason to modify the documents. In *KSR International Co. v. Teleflex*

*Inc.*, 550 U.S. 398, 82 USPQ2d 1385, 127 SCt 1727 (2007), the U.S. Supreme Court held that in determining obviousness, it is necessary “to determine whether there was an apparent reason to combine the known elements in the fashion claimed” *KSR*, slip op. 14, 82 USPQ2d at 1396. Further, “there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR* at 1396, quoting *In re Kahn*. With respect to the rejection of claim 1, for example, the reasoning provided in the Office Action for combining Medina and Berkun states:

Therefore it would have been obvious to one of ordinary skill in the art at the time [*sic*] the invention to incorporate the method of generating a plurality of metadata fragment data of Berkun into the system of Medina because there is a need for an automated multimedia and streaming media search tool that provides information to a user that overcomes the previously described drawbacks and disadvantages (Berkun: paragraph 0008.

Applicant asserts that the cited rationale for combining Medina and Berkun is merely a conclusion and therefore fails to meet the standard articulated by the Supreme Court in *KSR International Co. v. Teleflex Inc.* In fact, the Examiner appears to have performed a search to find a random patent publication that describes “partitioning metadata,” without making any attempt to demonstrate that Berkun is relevant to either Medina, or to the problem that the presently claimed invention seeks to overcome. For example, the Office Action states that the reason for combining Berkun with Medina is that a need exists for an automated multimedia and streaming media search tool. However, the Office Action fails to establish how such a streaming media search tool is even relevant to the disclosure of Medina, given that Medina appears to be directed towards a digital content acquisition system having a metadata acquisition tool for acquiring metadata and content usage conditions.

As another example, Berkun states that its objectives include avoiding the disadvantages of conventional search engines. According to Berkun, these disadvantages, among others, include: 1) an orientation toward textual information over other forms of data; 2) the aggregation of irrelevant information with relevant information in a search; and 3) the duplication of search results. The current rejection is deficient, however, because the Office Action fails to demonstrate how overcoming any of these disadvantages would be relevant to Medina.

In view of all of the above, Applicant respectfully asserts that the reason provided in the Office Action for combining Berkun with Medina is merely a generalized conclusion and is therefore insufficient to meet the burden imposed by *KSR*. Absent a particularized reason,

taking into account the problem that the presently claimed embodiment seeks to address, or a similarly relevant problem, the Examiner's rationale appears to be taken from Appellants' own application, and thus amounts to an improper hindsight reconstruction of the present invention.

Accordingly, the Office Action fails to demonstrate that one skilled in the art would have had a reason to combine the teachings of Medina with those of Berkun, and the rejection under 103(a) is improper.

REQUEST FOR INTERVIEW BEFORE NEXT OFFICE ACTION:

Applicant respectfully requests the Examiner contact the undersigned attorney to discuss the pending claims before issuance of the next Office Action. Applicants believe that a thorough review of the pending claims will be helpful in furthering prosecution.

CONCLUSION:

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

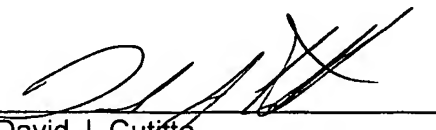
Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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